

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY  
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 17621 of 2004**

Between:

**Shaik Amanullah, S/o Shaik Syedullah  
R/o D. No. 23-33-1, Soldierpeta, Opp SBI Visakahapatnam-1**

..... PETITIONER

**AND**

**1 Bharat Sanchar Nigam Ltd. rep by Managing Director, Delhi  
2 Chief General Manager, Telecom, A.P. Circle Bharat Sanchar Nigam  
Limited, Hyderabad-500 001  
3 General Manager, Bharat Sanchar Nigam Ltd., Telecom District,  
Visakhapatnam-530020**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or Direction, particularly a Writ in the nature of Mandamus, declaring the proceedings No. TA/STA(R)/13-205/205/2000, HYD. dt 5-6-2004 issued by the 1st Respondent herein is illegal, arbitrary and opposed to the scheme formulated for making compassionate grounds of the employees of Department of BSNL and further direct the respondents herein to appoint the petitioner herein in any suitable post in BSNL as per his qualifications.

**Counsel for the Petitioner:MR.K.V.SUBRAMANYA NARASU**

**Counsel for the Respondents: MR.C.YADAGIRI**

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 17621 of 2004

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ORDER:

This writ petition is filed seeking to declare the proceedings No. TA/STA(R)/13-205/205/2000, Hyd. Dated 5.6.2004 issued by the 1<sup>st</sup> respondent as illegal and arbitrary and to appoint the petitioner in any suitable post in BSNL.

The case of the petitioner is that his father while working in the respondent-BSNL had applied for voluntary retirement on medical grounds by his representation dated 3.1.1999 due to ill-health. As per the proceedings of the respondent-Corporation dated 27.1.2000, the father of petitioner was permitted to retire on medical invalidation. At that time the father of the petitioner was aged about 52 years. By the date of retirement, the family consisted of wife, three sons and two daughters. The eldest daughter was married and she is living with her husband. The eldest son contracted inter-caste marriage and went out of the family. As the father of the petitioner was unable to sustain himself and his dependants with meager pension, he made a representation dated 23.10.2000 to appoint the petitioner on compassionate grounds. The father of the petitioner was required to furnish the particulars in a pro forma by the General Manager and the same were furnished. Even after three years of the representation, no appointment was made. Therefore, the father of the petitioner made another representation dated 26.8.2003 to the Department, but the same has not been considered. But ultimately the impugned proceedings have been passed. Challenging the same, the present writ petition is filed.

The respondents filed counter affidavit admitting the voluntary retirement of the father of the petitioner on medical grounds.

It is further stated that the family of the retired employee consists of 3 sons and two daughters and all are living together under one roof. It is not true that the elder son of the retired employee is residing separately. The first son of the retired employee is employed in a private firm and earning Rs.9,000/- per annum and the 2<sup>nd</sup> son of the retired employee is employed as Auto Driver and earning Rs.12,000/- per annum. The representation of the father of the petitioner was forwarded to the Circle High Power Committee which is the competent body to consider and give appointment under compassionate grounds. The BSNL Corporate Office, New Delhi vide their letter dated 15.5.2004 intimated that the High Power Committee has decided to reject the request for appointment on compassionate grounds as the retired employee is having earning members. As the deceased employee is having two earning members to support the needs of the family and the family is not living in indigent condition which warrant giving of appointment, rightly the case of the petitioner was rejected. The retired employee is getting Rs.1020/- per month as pension and his two elder sons are supporting the family and they are residing under the same roof. Hence, the respondents pray to dismiss the writ petition.

A reply affidavit has been filed by the petitioner stating that his elder brother after getting married is living separately. It is false to state that the 2<sup>nd</sup> brother is earning Rs.12,000/- per annum. The respondent-Corporation has not considered the representation of his father. The respondents are having many employees who have been appointed under compassionate grounds, such as, Laxmi Kanth, Vidyavathi, Laxmi, Srinivas, L. Aravind, L. Srinivasa Rao, Trinadh Reddy etc. His father is receiving Rs.1885/- as pension whereas the persons who retired in the above cases are receiving more person than the father of the petitioner. The children of the persons who retired and who are getting more pension and are well off have been appointed under compassionate ground but the same was denied to the petitioner. Hence the petitioner prays to set aside the impugned proceedings.

Learned counsel for the petitioner contended that since the 1<sup>st</sup> son of the retired employee is staying separately and the petitioner and another brother of the petitioner are unemployed and the father of the petitioner is getting only Rs.1020/- towards pension, rejection of the case of the petitioner is illegal and not based upon proper enquiry and that similarly situated persons were given compassionate appointment. Therefore, he prays to set aside the impugned proceedings.

On the other hand, learned counsel for the respondents contended that considering the size of the family, ages of the children of the retired employee and earning capacity of the family, the case of the petitioner has been rejected by the High Power Committee and therefore the impugned order does not suffer from any legal infirmities so as to call for interference by this court. Hence, he prays to dismiss the writ petition.

It is not disputed before this court that the father of the petitioner was permitted to retire voluntarily vide proceedings dated 27.1.2000 on the representation dated 3.1.1999 of the father of the petitioner on medical grounds at the age of 52. It is not disputed that at that time the family of the retired employee consisted of wife, three sons and two daughters. Thereafter, the father of the petitioner made a representation dated 23.10.2000 to the 3<sup>rd</sup> respondent to appoint the petitioner on compassionate grounds. After three years, some information was called for and thereafter the impugned proceedings have been passed.

There is a scheme available in the respondent-Corporation to give appointment on compassionate grounds to a dependent family member of the Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the urgency. As per the scheme, *"Ministries/Departments can consider requests for compassionate*

*appointment even where the death or retirement on medical grounds of a Government servant took place a long back, say five years or so. While considering such belated request it should, however, be kept in view that the concept of compassionate appointment is largely related to the need of immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned”.*

As seen from the above scheme, it is clear that the object of the scheme is to grant appointment on compassionate grounds to a dependant family member of the got servant who retired on medical grounds leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant from financial destitution and also to help it get over the urgency, subject, of course, to fulfilling the eligibility criteria. The High Power Committee of the Corporate office of the 1<sup>st</sup> respondent rejected the case of the petitioner for the following reason:

*“the ex-official got his retirement on medical invalidation on 22.1.2000 when he was 52 years of age. His family consists of self, his wife, 3 sons and 2 daughters. The elder daughter is already married. The elder son is working in a Private Firm on daily wages and the second son is pulling Auto Rickshaw. They are living jointly”.*

Admittedly the family of the retired employee who retired on medical grounds consists of the retired employee, wife, 3 sons and 2 daughters. One of the daughters is already married and is staying with her husband. According to the petitioner, his eldest brother contracted inter-caste marriage and went out of the family and has been staying separately. The petitioner did not state about the

avocation of his second brother. According to the petitioner, his father is getting Rs.1020/- per month towards pension and at the time of retirement he got a sum of Rs.98,203/-. According to the petitioner, that amount has been spent for the prolonged illness of his father who was bed-ridden. Whereas, in the reply affidavit it is stated that his father is receiving monthly a sum of Rs.1885/- towards pension. The fact that the second son is working as Auto Driver and getting Rs.12,000/- per annum is not specifically denied or disputed. It is also not specifically denied or disputed in the counter affidavit that the eldest brother of the petitioner is getting Rs.9,000/- per annum. The averment that the elder brother of the petitioner is living separately is not substantiated with any documentary proof, more so when it is the case of the respondent-Corporation that the elder brother of the petitioner is also living under the same roof. Under these circumstances, it is expected that the petitioner shall file some documents to show that his elder brother is residing separately. According to the respondents, the father of the petitioner got Rs.78,368/- under DCRG and Rs.95,717/- under commutation of pension and an amount of Rs.23,386/- under leave encashment. It is not shown that after retirement the father of the petitioner was constantly taking medical treatment and the retirement benefits have been used for the treatment of the retired employee. The High Power Committee taking note of the earning members of the family, size of the family, the essential needs of the family etc. has rejected the case of the petitioner. As per the scheme, one of the family members can be appointed on compassionate grounds provided the family is harness or living in penury and without any means of livelihood.

From the facts and circumstances, it is not a case of there being no assistance in the family. The economic distress of the retired employee and the family has to be kept in mind. The whole object of giving compassionate appointment is to relieve the family of the Government servant from financial destitution and to help it get

over the urgency. The allegations in the affidavit and reply affidavit do not indicate the need of urgency to appoint the petitioner on compassionate grounds. The High Power Committee taking all the circumstances into consideration rejected the case of the petitioner for compassionate appointment. In the affidavit it is stated that the father of the petitioner is getting Rs.1020/- per month towards pension whereas in the reply affidavit it is stated that his father is getting Rs.1885/- p.m. as pension. So also, it is not shown that the persons who are appointed on compassionate appointment are similarly situated so as to know whether the respondents exhibited any discrimination in not giving appointment to the petitioner. The reply affidavit is very vague except mentioning that some persons are given compassionate appointment on medical invalidation. All the persons cannot be compared with the case of the present petitioner since the factual foundation is not the same.

In view of the above, the impugned proceedings do not suffer from any legal infirmities so as to call for interference of this Court. The writ petition is devoid of merit and it is accordingly dismissed. In the circumstances, no costs.

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K.C. Bhanu, J.

Date: --01—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

**To**

- 1 Bharat Sanchar Nigam Ltd. rep by Managing Director, Delhi**
- 2 Chief General Manager, Telecom, A.P. Circle Bharat Sanchar Nigam Limited, Hyderabad-500 001**
- 3 General Manager, Bharat Sanchar Nigam Ltd., Telecom District, Visakhapatnam-530020.**
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